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IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEVADA

Thomas Bodovinac, Individually and on  
 Behalf of All Others Similarly Situated

Plaintiff,

vs.

McCarthy, Burgess & Wolff, Inc., Crown  
 Asset Management, LLC  
 and John Does 1-25

Defendant(s).

) Docket No.

) **CLASS ACTION COMPLAINT for**  
 ) **violations of the Fair Debt Collection**  
 ) **Practices Act, 15 U.S.C. § 1692 et seq.**

) **DEMAND FOR JURY TRIAL**

Plaintiff Thomas Bodovinac (hereinafter, “Plaintiff”), a Nevada resident, brings this Class Action Complaint by and through his attorney, The Law Offices of Robert M. Tzall against Defendant McCarthy, Burgess & Wolff (hereinafter “Defendant MB& W”) and Defendant Crown Asset Management, LLC (hereinafter “Defendant CAM”) individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

## **INTRODUCTION/PRELIMINARY STATEMENT**

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2  
3 1. Congress enacted the Fair Debt Collection Practices Act (the “FDCPA”) in 1977  
4 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt  
5 collection practices by many debt collectors.” 15 U.S.C. §1692(a). At that time, Congress was  
6 concerned that “abusive debt collection practices contribute to the number of personal  
7 bankruptcies, to material instability, to the loss of jobs, and to invasions of individual  
8 privacy.” *Id.* Congress concluded that “existing laws...[we]re inadequate to protect  
9 consumers,” and that ““the effective collection of debts’ does not require ‘misrepresentation  
10 or other abusive debt collection practices.’” 15 U.S.C. §§ 1692(b) & (c).

11  
12 2. Congress explained that the purpose of the Act was not only to eliminate abusive  
13 debt collection practices, but also to “insure that those debt collectors who refrain from using  
14 abusive debt collection practices are not competitively disadvantaged.” *Id.* § 1692(e). “After  
15 determining that the existing consumer protection laws were inadequate.” *Id.* § 1692(b),  
16 Congress gave consumers a private cause of action against debt collectors who fail to comply  
17 with the Act. *Id.* § 1692k.

## **JURISDICTION AND VENUE**

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19  
20 3. The Court has jurisdiction over this class action pursuant to 15 U.S.C. § 1692 et.  
21 seq. and 28 U.S.C. § 2201. The Court has pendent jurisdiction over the State law claims in  
22 this action pursuant to 28 U.S.C. § 1367(a).

23  
24 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as this  
25 is where the Plaintiff resides as well as where a substantial part of the events or omissions  
26 giving rise to this claim occurred.  
27  
28

**NATURE OF THE ACTION**

5. Plaintiff brings this class action on behalf of a class of Nevada consumers under §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA"), and

6. Plaintiff is seeking damages and declaratory relief.

**PARTIES**

7. Plaintiff is a resident of the State of Nevada, County of Clark, with an address of 7906 Red Rock Ridge Ave, Las Vegas, NV 89179.

8. Defendant McCarthy, Burgess & Wolff, Inc. is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 26000 Cannon Rd. Cleveland, Ohio 44146.

9. Upon information and belief, Defendant McCarthy, Burgess & Wolff, Inc. is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

10. Defendant CAM, Inc. is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 3100 Breckinridge Blvd, Ste 725, Duluth, GA 30096-7605.

11. Upon information and belief, Defendant CAM. is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

12. John Does 1-25, are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

**CLASS ALLEGATIONS**

13. Plaintiffs bring this claim on behalf of the following case, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

14. The Class consists of:

- a. all individuals with addresses in the State of Nevada;
- b. to whom Defendant MB&W sent an initial collection letter attempting to collect a consumer debt;
- c. that imposed unauthorized fees and did not provide any explanation for unauthorized fees;
- d. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

15. The identities of all class members are readily ascertainable from the records of Defendants and those companies and entities on whose behalf they attempt to collect and/or have purchased debts.

16. Excluded from the Plaintiff Class are the Defendants and all officer, members, partners, managers, directors and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

17. There are questions of law and fact common to the Plaintiff Class, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendants' written communications to consumers, in the forms attached as Exhibit A, violate 15 U.S.C. §§ 1692e and 1692f.

18. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories. The Plaintiff will fairly and adequately protect the interests of

1 the Plaintiff Class defined in this complaint. The Plaintiff has retained counsel with  
2 experience in handling consumer lawsuits, complex legal issues, and class actions, and neither  
3 the Plaintiff nor his attorneys have any interests, which might cause them not to vigorously  
4 pursue this action.

5  
6 19. This action has been brought, and may properly be maintained, as a class action  
7 pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is  
8 a well-defined community interest in the litigation:

- 9 a. **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges,  
10 that the Plaintiff Class defined above is so numerous that joinder of all  
11 members would be impractical.
- 12 b. **Common Questions Predominate:** Common questions of law and fact exist  
13 as to all members of the Plaintiff Class and those questions predominate over  
14 any questions or issues involving only individual class members. The principal  
15 issue is whether the Defendants' written communications to consumers, in the  
16 forms attached as Exhibit A violate 15 U.S.C. § 1692e and 1692f.
- 17 c. **Typicality:** The Plaintiff's claims are typical of the claims of the class  
18 members. The Plaintiff and all members of the Plaintiff Class have claims  
19 arising out of the Defendants' common uniform course of conduct complained  
20 of herein.
- 21 d. **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the  
22 class members insofar as Plaintiff has no interests that are adverse to the absent  
23 class members. The Plaintiff is committed to vigorously litigating this matter.  
24 Plaintiff has also retained counsel experienced in handling consumer lawsuits,  
25 complex legal issues, and class actions. Neither the Plaintiff nor his counsel  
26  
27  
28

1 have any interests which might cause them not to vigorously pursue the instant  
2 class action lawsuit.

- 3 e. **Superiority:** A class action is superior to the other available means for the fair  
4 and efficient adjudication of this controversy because individual joinder of all  
5 members would be impracticable. Class action treatment will permit a large  
6 number of similarly situated persons to prosecute their common claims in a  
7 single forum efficiently and without unnecessary duplication of effort and  
8 expense that individual actions would engender.  
9

10 20. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure  
11 is also appropriate in that the questions of law and fact common to members of the Plaintiff  
12 Class predominate over any questions affecting an individual member, and a class action is  
13 superior to other available methods for the fair and efficient adjudication of the controversy.  
14

15 21. Depending on the outcome of further investigation and discovery, Plaintiff may, at  
16 the time of class certification motion, seek to certify a class(es) only as to particular issues  
17 pursuant to Fed. R. Civ. P. 23(c)(4).  
18

### 19 **FACTUAL ALLEGATIONS**

20 22. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs  
21 numbered above herein with the same force and effect as if the same were set forth at length  
22 herein.  
23

24 23. Some time prior to September 22, 2020, an obligation was allegedly incurred to  
25 creditor Comenity Bank - Pier 1 Imports

26 24. The Comenity Bank - Pier 1 Imports obligation arose out of transactions incurred  
27 primarily for personal, family or household purposes.  
28

1           25.     The alleged Comenity Bank - Pier 1 Imports obligation is a "debt" as defined by  
2     15 U.S.C. § 1692a(5).

3           26.     Comenity Bank - Pier 1 Imports is a "creditor" as defined by 15 U.S.C. § 1692a(4).

4           27.     Comenity Bank - Pier 1 Imports debt purportedly sold the alleged debt to  
5     Defendant CAM who contracted with the Defendant MB&W to collect the alleged debt.  
6

7  
8                                   Violation – September 22, 2020 Collection Letter

9           28.     On or about September 22, 2020, Defendant MB&W sent the Plaintiff a collection  
10    letter (the "Letter") regarding the alleged debt owed to Comenity Bank - Pier 1 Imports See a  
11    true and correct copy of the Letter attached at Exhibit A.

12           29.     The letter states a current balance of \$591.39.

13           30.     The letter further states: "Dependent on your location and/or the original creditor,  
14    be advised that a service fee can be charged on payments over the phone and credit card  
15    transactions."  
16

17           31.     Plaintiff did not agree to such a collection charge.

18           32.     The addition of this collection fee by Defendant which was not authorized by the  
19    agreement creating the debt or permitted by law, was an attempt to collect an amount not  
20    owed by Plaintiff.  
21

22           33.     Defendant misled and deceived Plaintiff into the belief that he falsely owed an  
23    additional service fee, when this charge is a violation of the FDCPA.

24           34.     Plaintiff incurred an informational injury as Defendant provided him with false  
25    information as to the amount he actually owed on the alleged debt.  
26  
27  
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36. As a result of Defendants' deceptive, misleading and unfair debt collection practices, Plaintiff has been damaged.

37. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

39. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

f. As the Letter it is open to more than one reasonable interpretation, at least one of which is inaccurate in violation of §1692e(2).

**41.** By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

- 8 -



1           42. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs  
2 above herein with the same force and effect as if the same were set forth at length herein.

3           43. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff  
4 violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692f.

5           44. Pursuant to 15 U.S.C. §1692f, a debt collector may not use any unfair or  
6 unconscionable means in connection with the collection of any debt.  
7

8           45. Defendant violated this section by

9                   a. unfairly advising Plaintiff that he owed Defendant more money than the  
10 amount of his debt; and

11                   b. attempting to collect an amount not expressly authorized by the underlying  
12 agreement creating the debt or permitted by law in violation of § 1692f(1).  
13

14           46. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's  
15 conduct violated Section 1692f et seq. of the FDCPA, actual damages, statutory damages,  
16 costs and attorneys' fees.  
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20                                   **DEMAND FOR TRIAL BY JURY**

21           47. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby  
22 requests a trial by jury on all issues so triable.  
23

24  
25                                   **PRAYER FOR RELIEF**

26       **WHEREFORE**, Plaintiff Thomas Bodovinac, individually and on behalf of all others similarly  
27 situated, demands judgment from Defendant MB & W and Defendant CAM, as follows:  
28

- Dated: December 8, 2020

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